IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO. 40 OF 2003

IN

COMPANY PETITION NO. 10 OF 1999

M/S NIGEL SHIPYARD PVT.LTD.,VASCO-DA-GAMA,GOA. ....Applicant

Versus

SHRI H.S. MAINI,BANGALORE-38 AND 5 ORS., ...Respondents

Mr. D. Pangam, Advocate for the Applicant.
Ms. A. Razaq, Advocate for the Official Liquidator.
Mr. P. A. Kholkar, Advocate for the Respondent Nos. 1, 3, 4, 5 and 6.

Coram:- N. A. BRITTO, J.

Date:- 30th June, 2006

P.C.

Heard Shri Pangam, the learned Counsel on behalf of the applicant.

2. The applicant claiming to be a Creditor of the Company under liquidation in the sum of Rs.3,59,000/-, had filed the present application under section 542 of the Act. Shri Pangam on behalf of the applicant submits that the liability of the Company under liquidation has been fully settled by paying to the applicant a sum of Rs.3,00,000/-, which in fact has been paid by M/s. Vikrant Shipping and since the liability of the applicant has already been met, the applicant does not wish to pursue or prosecute the application. Shri Kholkar, on behalf of respondent nos. 1, 3, 4, 5 and 6, has no objection for the withdrawal of the application. It is the submission of Ms. Razaq on behalf of the Official Liquidator, that once it

was brought to the notice of this Court the misconduct of the ex-directors in not showing that the applicant was a Creditor of the Company, the applicant should not be allowed to withdraw in as much as the application cannot be disposed of without proper inquiry into it.

3. Since the liability of the applicant has been settled and paid finally and the applicant itself does not wish to prosecute the application, I do not see any reason as to why the applicant should not be allowed to withdraw the application. In case the Official Liquidator is entitled to prosecute the ex-directors for not showing in the statement of affairs that the applicant was one of the Creditors or for any other reason, the Official Liquidator would always be at liberty to prosecute them.

4. With the above observations, the application is allowed to be withdrawn and shall stand disposed of as such, without prejudice to the rights and contentions of the Official Liquidator.

Authenticated copy to be furnished to the parties on payment of necessary charges.

N. A. BRITTO, J.

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